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Attorneys for Plaintiff,
Christina Gonzales

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

Christina Gonzales,

Plaintiff,

vs.

Capital One Bank (USA) N.A.,

Defendant.

Case No.: 2:19-cv-00807-PMW

COMPLAINT

For this Complaint, the Plaintiff, Christina Gonzales, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (the "TCPA").

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendants transact business here and a substantial portion of the acts giving rise to this action occurred here.

PARTIES

3. The Plaintiff, Christina Gonzales (hereafter “Plaintiff”), is an adult individual residing in West Valley City, Utah, and is a “person” as defined by 47 U.S.C. § 153(39).

4. The Defendant, Capital One Bank (USA) N.A. (hereafter “Capital One”), is a company with an address of 1680 Capital One Drive, McLean, Virginia 22102-3491, and is a “person” as defined by 47 U.S.C. § 153(39).

FACTS

5. Within the last year, Capital One started calling Plaintiff’s cellular telephone, number 801-xxx-7801, in an attempt to collect a consumer debt allegedly owed by Plaintiff.

6. At all times mentioned herein, Capital One contacted Plaintiff using an automated telephone dialer system (“ATDS” or “predictive dialer”) and/or by using an artificial or prerecorded voice.

7. When Plaintiff answered the calls from Capital One, she heard a prerecorded message instructing Plaintiff to hold for the next available representative.

8. In December 2018, Plaintiff demanded that all calls to her cease immediately.

9. Nonetheless, Capital One continued to place automated calls to Plaintiff’s cellular telephone.

COUNT I

VIOLATIONS OF THE TCPA – 47 U.S.C. § 227, ET SEQ.

10. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

11. At all times mentioned herein and within the last four years, Defendant called Plaintiff on her cellular telephone using an ATDS or predictive dialer and/or by using a prerecorded or artificial voice.

12. Defendant continued to place automated calls to Plaintiff's cellular telephone after being directed by Plaintiff to cease calling and knowing there was no consent to continue the calls. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

13. The telephone number called by Defendant was and is assigned to a cellular telephone serviced by T-Mobile for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

14. Plaintiff was annoyed, harassed and inconvenienced by Defendant's continued calls.

15. The calls from Defendant to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

16. Each of the aforementioned calls made by Defendant constitutes a violation of the TCPA.

17. Plaintiff is entitled to an award of \$500.00 in statutory damages for each call placed in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

18. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against Defendant:

- A. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
- B. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C);
- C. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

DATED: October 23, 2019

Hussey Law Firm, LLC

By: /s/ Curtis R. Hussey
Curtis R. Hussey

Attorney for Plaintiff
Christina Gonzales